

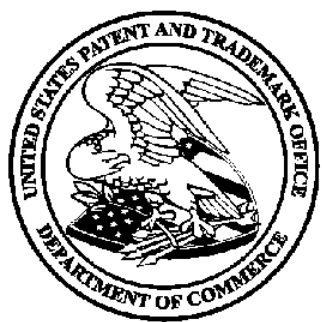
KAIST IP US LLC v. Samsung Electronics Co., LTD., et al.

Defendants' Motion To Stay Case Pending *Ex Parte* Reexamination

July 25, 2019

Case 2:16-cv-01314-JRG Document 664-5 Filed 07/25/19 Page 2 of 8 PageID #: 37082

The PTO's Final Office Action Invalidated All Asserted Claims



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,227	10/31/2018	6885055	75281.00043	8099
30954	7590	06/18/2019	EXAMINER	
LATHROP GAGE LLP			WHITTINGTON, KENNETH	
10851 MASTIN BLVD			ART UNIT	
BLDG 82, SUITE 1000			PAPER NUMBER	
OVERLAND PARK, KS 66210			3992	
			MAIL DATE	DELIVERY MODE
			06/18/2019	PAPER

FINAL OFFICE ACTION

This Final Office Action addresses claims 1-6, 11-13 AND 15-17 of United States Patent No. 6,885,055 to Jong-Ho Lee, entitled DOUBLE GATE FINFET DEVICE AND FABRICATION METHOD THEREOF (hereinafter the "**055 Patent**").

Claims 1-6, 11-13 and 15-17 are subject to reexamination herein.

Claims 1-6, 11-13 and 15-17 are rejected.

The PTO's Final Office Action Invalidated All Asserted Claims

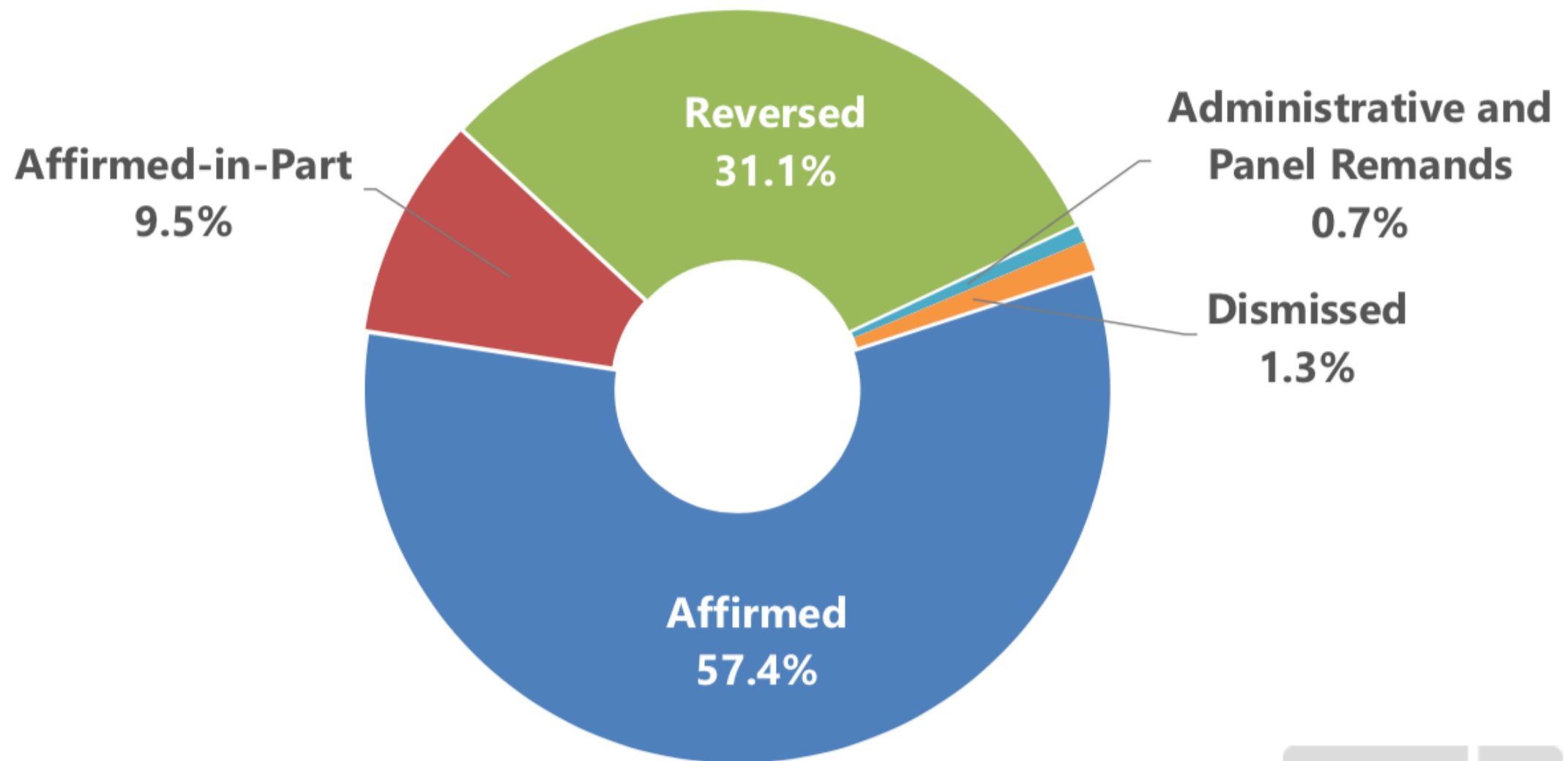
Claim	Final Rejection Invalidity Grounds
1	<ol style="list-style-type: none"> 1. Anticipated by Inokawa 2. Anticipated by Hisamoto 3. Obvious in view of Mizuno
2, 3	<ol style="list-style-type: none"> 1. Obvious in view of Inokawa and Yagishita 2. Anticipated by Hisamoto 3. Obvious in view of Mizuno
4	<ol style="list-style-type: none"> 1. Obvious in view of Inokawa and Yagishita 2. Anticipated by Hisamoto 3. Obvious in view of Hisamoto 4. Obvious in view of Mizuno
5	<ol style="list-style-type: none"> 1. Anticipated by Inokawa 2. Anticipated by Hisamoto 3. Obvious in view of Hisamoto 4. Obvious in view of Mizuno

Claim	Final Rejection Invalidity Grounds
6	<ol style="list-style-type: none"> 1. Anticipated by Inokawa 2. Anticipated by Hisamoto 3. Obvious in view of Mizuno
11, 12	<ol style="list-style-type: none"> 1. Obvious in view of Hisamoto
13	<ol style="list-style-type: none"> 1. Anticipated by Inokawa 2. Anticipated by Hisamoto 3. Obvious in view of Mizuno
15	<ol style="list-style-type: none"> 1. Obvious in view of Inokawa and Chen 2. Obvious in view of Hisamoto and Chen 3. Obvious in view of Mizuno and Chen
16	<ol style="list-style-type: none"> 1. Obvious in view of Inokawa and Yagishita 2. Anticipated by Hisamoto 3. Obvious in view of Mizuno
17	<ol style="list-style-type: none"> 1. Obvious in view of Inokawa and Yagishita 2. Anticipated by Hisamoto 3. Obvious in view of Hisamoto 4. Obvious in view of Mizuno

Cancellation of All Asserted Claims Is the Most Likely Outcome

- General PTAB Appeal statistics show high affirmance rate:

Appeal outcomes in FY19 (Oct. 1, 2018 - May 31, 2019)



Cancellation of All Asserted Claims Is the Most Likely Outcome

- EPR decisions are rendered by senior primary patent examiners and affirmed at an even higher rate at the PTAB.
 - Primary Examiner Whittington’s EPR decisions have never been reversed:

EPR	PTAB Appeal
90/012,086	Affirmed-in-full
90/012,087	Affirmed-in-full
90/011,275	Affirmed-in-full
90/011,864	Affirmed-in-full
90/011,865	Affirmed-in-full
90/010,980	Affirmed-in-full

The PTO's Final Office Action Invalidating All Claims Warrants A Stay Pending The PTAB's Decision

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Granting stay because “[a]s long as any portion of this case remained open at the time the court of appeals ruled on the board’s final decisions (which is highly likely given the timing of the appeals processes), cancellation of the patent claims would moot plaintiffs’ infringement claims.”

Ultratec, Inc. v. Sorenson Commc’ns, Inc., 2015 U.S. Dist. LEXIS 62561, at *12 (W.D. Wisc. May 13, 2015)



Affirming because “[t]he extent of remaining post-judgment motions in this case plausibly favors a stay,” and the patentees “cite no authority that precludes a district court from staying proceedings once a jury has rendered a verdict, while the district court and Respondents cite contrary cases.”

Ultratec, Inc. v. CaptionCall, LLC, 611 F. App’x 720, 722 (Fed. Cir. 2015)

The PTAB Decision Will Be Issued Before The Federal Circuit Would Decide An Appeal From This Court

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Based on an average time for decision of 5.7 months, and assuming Plaintiff does not seek an extension, the PTAB decision would come in August 2020.

- Aug. 19, 2019: Notice of Appeal due.
 - Oct. 19, 2019: Plaintiff opening brief due.
 - Dec. 19, 2019: Examiner answer brief due.
 - Feb. 19, 2020: Plaintiff reply brief due.
 - Aug. 2020: PTAB decision.
-
- Even with a 2-month extension for its notice of appeal, the PTAB decision would likely be issued October 2020 at the latest.
 - An appeal to the Federal Circuit takes an average of 14 months from notice of appeal to decision.
 - There is no reasonable prospect of the Federal Circuit deciding an appeal from judgment of this Court before the PTAB decision, especially given the Federal Circuit's general practice of maintaining awareness of pending related cases in the PTAB.

